

(2008) 01 KAR CK 0004
In the Karnataka High Court
Case No : Criminal Petition No. 2438 of 2003

Indu Jain and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Copyright Act, 1957 — Section 51, 52 A, 63, 68 A
Penal Code, 1860 (IPC) — Section 406

Citation : (2008) 36 PTC 553

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : Naganand, for R.B. Deshpande, for the Appellant; Sriyuths H. Hanumantharayappa, HCGP for Respondent No. 1, Rajesh Chandrakumar and Harikrishna S. Holla for the Respondent No. 2, for the Respondent

Judgement

N. Ananda, J.—The Petitioners arrayed as accused Nos. 1 to 4 in C.C. No. 1861/2003, pending trial for offences punishable under Sections 63, 51, 52A and 68A of Copyrights Act r/w Section 406 IPC, on the file of VI Addl. C.M.M., Bangalore, have filed this petition to quash the proceedings therein.

2. I have heard Sri S.S. Naganand, learned senior Counsel for Petitioners, Sri H. Hanumantharayappa, learned HCGP for I-Respondent and Sri Harikrishna S. Holla, Learned Counsel for II-Respondent.

3. The brief facts necessary for disposal of this petition are as follows:

Respondent No. 2 (hereinafter referred to as "complainant") filed a complaint u/s 200 Code of Criminal Procedure, alleging offences punishable under Sections 63, 51, 52A and 68A of the Copyrights Act, 1957 (for short, "the Act") r/w Section 406 IPC Against following accused:

1. The Managing Director

M/s. Kerala International Limited

United Kingdom

2. The Managing Director

M/s. Times Music

Mumbai.

3. M/s. Times Music

A division of Bennett, Colemann and Company Ltd.

The Times of India Building

Dr. D.N. Road

Mumbai-400 001

Rep. by its Managing Director

4. The Manager

M/s. Disc Work

Mumbai

5. Mr. Vijay

Owner

M/s. Shivam No. 104/1,105/1 and 102/1

A.M. Lane, S.P. Road

Bangalore-2.

6. The Manager

M/s. Planet, M

Brigade Road

Bangalore.

4. The learned Magistrate on receipt of complaint, passed the following order:

Complainant present and has filed private complaint, register, complaint is referred u/s 156(3) Code of Criminal Procedure, to P.I. of Ulsoor Gate Police Station for investigation and report.

The said police after investigation submitted a report u/s 173 Code of Criminal Procedure, against the Petitioners herein, who were not arrayed as accused in the complaint.

5. The learned senior Counsel appearing for Petitioners has made following submissions:

I. The complaint does not name the persons responsible for infringement of copyrights. The offences mentioned in complaint are alleged to have been committed by a company, there are no averments in the complaint in terms of Section 69 of the Copyright Act, 1957.

II. The learned senior Counsel has relied on the judgment of Supreme Court in the case of State of Haryana Vs. Brij Lal Mittal and Others, , relevant page 348, wherein it is held:

8. Nonetheless, we find that the impugned judgment of the High Court has got to be upheld for an altogether different reason. Admittedly, the three Respondents were being prosecuted as directors of the manufacturers with the aid of Section 34(1) of the Act which reads as under:

34. Offences by companies:--(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence." It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the Respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business.

9. In Municipal Corporation of Delhi v. Ram Kishan Rohtagi, while dealing with the applicability of Section 17(1) of the Prevention of Food Adulteration Act, 1954, which is in pari materia with Section 34(1) of the Act, on similar facts, this Court observed as under:

15. So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act committed by the Directors from which

a reasonable inference can be drawn that they could also be vicariously liable. In these circumstances, therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (Accused 4 to 7) has been made out ex facie on the allegations made in the complaint and the proceedings against them were rightly quashed.

III. After receipt of complaint, before referring the complaint u/s 156(3) Code of Criminal Procedure, the learned Magistrate should have applied his mind to find out whether complaint would disclose offences alleged against the accused. In support of this contention, the learned senior Counsel has relied on a Division Bench judgment of this Court, reported in Guruduth Prabhu and Others Vs. M.S. Krishna Bhat and Others,

6. The Learned Counsel for II-Respondent has made following submissions:

I. The learned Magistrate has ample powers to refer the matter to police u/s 156(3) Code of Criminal Procedure.

II. The Police during the course of investigation have ample powers u/s 173 Code of Criminal Procedure to submit a report against accused not mentioned in the complaint and for offences not mentioned in complaint, if they had come to conclusion such offences were committed by such persons.

III. It is not necessary to name the accused individually, when offences are committed by the company of which the Petitioners are directors,

IV. this Court cannot exercise its powers u/s 482 Code of Criminal Procedure as the scope is very limited.

V. The Learned Counsel, has relied on a judgment of the Supreme Court, reported in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , wherein the Supreme Court has held "when complaint is filed against Directors that they are responsible for the conduct of business of the company, proceedings can be quashed against Directors but not against the Managers."

7. In the case on hand, a complaint was filed u/s 200 Code of Criminal Procedure alleging commission of offences punishable under Sections 63, 51, 52A and 68A of Copyright Act r/w Section 406 IPC by M/s. Bennett, Coleman and Company Ltd.

8. As could be seen from the complaint, accused No. 1 is described as "the Managing Director, M/s. Kerala International Limited, United Kingdom". Accused No. 2 is described as "the Managing Director, M/s. Times Music, Mumbai". Accused No. 3 is described as "M/s. Times Music, a division of Bennett, Colemann and Company Ltd., the Times of India Building, Dr. D.N. Road, Mumabai-400 001, represented by its Managing Director. Accused No. 4 is described as "the Manager, M/s. Disc Work, Mumbai".

9. In the complaint, the Petitioners herein are not named, it is not stated that Petitioners were in-charge and responsible for the business of company. It is also

not stated they were responsible for bringing pirated cassettes into existence.

10. The learned Magistrate has not even perused the complaint to consider if the averments of complaint would constitute the offences alleged therein. The learned Magistrate has not considered provisions of Section 69 of the Act, when offences are alleged to have been committed by a company.

11. The Learned Counsel for II-Respondent has referred to Section 69(2) of the Act, which reads thus:

Where an offence under copyright Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or " other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

12. In my considered opinion, Section 69(2) cannot be considered as a deeming provision to fasten vicarious criminal liability on the Managing Director and Directors of the Company, in the absence of averments in terms of Section 69(1) of the Act. The learned Magistrate has lost sight of these facts. A perusal of impugned order discloses soon after complaint was presented, the learned Magistrate even without perusing the complaint, has referred the complaint to Ulsoor Gate Police Station.

13. A Division Bench of this Court in the case of Guruduth Prabhu and Others Vs. M.S. Krishna Bhat and Others, has held:

If every complaint filed u/s 200 Code of Criminal Procedure is referred to the police u/s 156(3) without application of mind about the disclosure of an offence, there is every likelihood of unscrupulous complainants in order to harass the alleged accused named by them in their complaints making bald allegations just to see that the alleged accused are harassed by the police who have no other go except to investigate as ordered by the Magistrate. Therefore, it is mandatory for the Magistrate to apply his mind to the allegations made in the complaint and in only cases which disclose an offence, the Magistrate gets jurisdiction to order an investigation by the police if he does not take cognizance of the offence. When the allegations made in the complaint does not disclose cognizable offence, the Magistrate has no jurisdiction to order police investigation under Sub-section (3).

14. In my considered opinion, in the case on hand, the learned Magistrate, should have considered the complaint to find out whether averments therein would constitute the alleged offences when the offences alleged to have been committed by the company, the learned Magistrate should have considered the averment of complaint with reference to Section 69 of the Act. The learned Magistrate without referring to complaint and offences alleged to have been committed by accused, has referred the matter to the police u/s 156(3) of Code of Criminal Procedure. Therefore, order passed by the learned Magistrate cannot

be sustained.

15. In the result, I pass the following:

ORDER

The impugned order passed by the learned Magistrate, referring the complaint u/s 156(3) of Code of Criminal Procedure and subsequent chargesheet filed against Petitioners, in C.C. No. 1861/2003, who are not arrayed as accused in the complaint are set aside. The matter is remanded to the learned Magistrate to consider the complaint afresh from the stage of its presentation, in the light of observations made in this order and in accordance with law.